

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7612

Petition of Central Vermont Public Service)
Corporation for approval of its "Smart Power)
Plan", to implement Advanced Metering)
Infrastructure throughout its service territory--)

Order entered: 5/24/2010

PROTECTIVE ORDER RE:
SELECTED ADVANCED METERING INFRASTRUCTURE PLAN MATERIALS
AND RESPONSE TO INFORMATION REQUEST

I. INTRODUCTION

On April 7, 2010, Central Vermont Public Service Corporation ("CVPS" or the "Company") filed a motion for confidential treatment for portions of Attachments A, B, C, D, and E to the CVPS Advanced Metering Infrastructure ("AMI") Implementation Plan ("SmartPower Plan" or the "Plan"). On May 19, 2010, CVPS filed a motion for confidential treatment of a CD-ROM containing the Company's SmartPower business cases using pessimistic assumptions filed in response to questions raised by Public Service Board ("Board") staff at the Technical Workshop held in this matter on May 14, 2010. In its motions, CVPS requests that this information be placed under seal and kept confidential. No other party opposed CVPS's motions or filed comments.

II. DISCUSSION

We have reviewed the motion and supporting materials, and we conclude that CVPS has made a *prima facie* showing that confidential treatment is warranted for portions of Attachments A, B, C, D, and E to the SmartPower Plan and for the CD-ROM containing the Company's SmartPower business cases using pessimistic assumptions. Therefore, we hereby grant CVPS's motions for protective orders for these documents.

To promote full public understanding of the basis for its decisions, the Board has actively taken steps to limit the amount of information subject to protective orders. The Board has encouraged parties to remove material from that protection to the extent possible. Since 2001, the Board has required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.¹

In determining whether to protect confidential information, the Board considers three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?²

In both motions, CVPS asserts that the information contained in the confidential attachments is material to the business, operations, and strategies of the Company. CVPS maintains that the information impacts CVPS's labor management activities and its ability to be competitive. In addition, CVPS explains that the AMI implementation materials contain confidential business information obtained from counterparties and other third-party participants in the Company's Meter Data Management System ("MDMS") vendor solicitation process. CVPS maintains that it is in the interest of its customers that it be able to enter into confidential transactions with counterparties in order to achieve cost-effective purchase arrangements for new technology acquisitions.

1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545, ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

2. *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

Because no party filed any comment or noted any disagreement with CVPS's statements, we accept the Company's averment as true for purposes of its motion.

We have reviewed the motions and supporting materials, and we have applied the existing standard. We conclude that the documents constitute commercial information that should be protected, that disclosure could cause a cognizable harm sufficient to warrant protective orders, and that there is good cause for protecting the information. Therefore, CVPS has made a *prima facie* showing that confidential treatment is warranted for the information at issue, and we grant CVPS's motions for protective orders.

In addition, the Board has consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We expect CVPS to do the same here. At this time, we are not explicitly ruling that any specific information should remain confidential indefinitely. Parties retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections we adopt in this Order or be removed completely from protection as confidential information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by Central Vermont Public Service Corporation (as described above) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this

proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of May 24, 2010, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

SO ORDERED.

Dated at Montpelier, Vermont this 24th day of May, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: May 24, 2010

ATTEST: s/ Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)